

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHELE ERKAN, on behalf of)
herself, her minor child,)
and all others similarly)
situated,) No. 12-12052-FDS
Plaintiff,)
vs.)

NEW ENGLAND COMPOUNDING
PHARMACY, INC., d/b/a NEW
ENGLAND COMPOUNDING CENTER,
et al.,
Defendants.

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

STATUS CONFERENCE

John Joseph Moakley United States Courthouse
Courtroom No. 2
One Courthouse Way
Boston, MA 02210

February 15, 2013
10:00 a.m.

Valerie A. O'Hara
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3204
Boston, MA 02210
E-mail: vaohara@gmail.com

1 the defendants is in bankruptcy at this stage.

2 At the risk of stating the obvious and
3 getting perhaps way ahead of myself, I want to begin
4 talking immediately about where I think this thing is
5 likely to go. I don't have really hardly any facts at
6 all, and it's always dangerous to make a decision or to
7 begin even trying to make a decision without facts, but
8 it does look to me like we have a relatively small pool
9 of assets here or a defined pool.

10:05AM

10 We look like we're going to have a large
11 pool of claims, and my guess is that those claims are
12 going to greatly exceed the available assets, I'm
13 assuming, you know, liability here, I'm assuming it
14 away, causation and product identification.

15 There may be lots of issues here, but
16 assuming there is liability, I think, again, there's a
17 limited pool, and I think we need to be talking about
18 and thinking about from the beginning a procedure
19 perhaps through the bankruptcy court, perhaps not, where
20 there is a fund that could be administered to handle the
21 claims for people that want to go down that path to try
22 to reach the most equitable possible distribution of
23 whatever assets are available.

10:05AM

24 I'm very conscious that whatever we do in
25 litigation will diminish the insurance assets anyway and

1 perhaps all of the available assets, and, of course,
2 everyone has a right to whatever due process the law
3 allows. I'm sure there are individual claims and
4 defenses and wrinkles that need to be thought through,
5 but, again, I think this is something we need to be
6 addressing from the beginning.

7 And, of course, also to state the obvious,
8 it is important to me to manage the case that we have
9 procedures and protocols in place so that I can imagine
10 the litigation. To the extent there is litigation, I
11 have appointed interim liaison counsel for the
12 Massachusetts cases or the first dozen or so, and I need
13 to set in motion a process for appointment of lead
14 counsel.

15 We may at some point get to having
16 committees and so forth, but I think I want to start
17 with the relatively, relatively simple issue of
18 appointing lead counsel, and I don't propose to do
19 anything at this conference other than have a discussion
20 again about where we are and to set some initial
21 deadlines for achieving some of these things.

22 I welcome the lawyers who are appearing by
23 telephone, I've seen some of you, some of you I have
24 not, but welcome. I hope you can hear me, and I'm going
25 to ask everyone who's in the courtroom who speaks to

1 creditors' committee to file its complaint, and the
2 creditors' committee successfully briefed and argued
3 motions for injunctive relief and attachments, so on
4 January 28th, the bankruptcy court ordered the
5 following: Ameridose, GDC and Medical Sales Management
6 are restrained from paying Barry, Lisa, Greg or Carla up
7 to \$21.1 million. The property of the individuals is
8 attached up to \$21.1 million. The individuals are
9 restrained from spending any assets other than as
10 necessary for ordinary living or legal expenses, which
11 the Court noted did not include February break trips to
12 Aspen and an attachment of trustee process attached bank
13 accounts up to \$21.1 million. So that's where we are,
14 your Honor.

15 In terms of where we go from here, I think
16 that everyone on the plaintiffs' side agrees with the
17 observation that you made earlier, which is that the
18 goal here should be to minimize expenses so as to not
19 further deplete the pot while also securing a rapid
20 recovery for a relatively well-known class of victims.

21 As I mentioned earlier, there are some
22 strategic decisions to be made here in terms of which
23 claims against particular groups of defendants proceed
24 in which venue. We think that the Court ought to focus
25 on appointing lead counsel or plaintiff leadership

1 lingering in the air and that we're starting to touch on
2 is where do we go from here, and I'll just note the
3 bankruptcy court has one model, and that model involves
4 expenses being incurred by the creditors' committee, the
5 trustee, respective counsel, financial advisors. That
6 model can reduce available assets and the value of the
7 estate in principal. The MDL has a different model, one
8 based on at least the plaintiffs' lawyers working on
9 contingency who are only paid if there is a recovery.

10:54AM

10 There are efficiencies associated with each
11 model, and we believe that we can work together to come
12 up with the most efficient resolution here. The overall
13 notion, of course, should be to coordinate the
14 litigation and to take the steps necessary, whether here
15 or there, to foster an early fund for all claimants that
16 can be equitably distributed, and we're counting, your
17 Honor, on yourself working with Judge Boroff as well as
18 counsel in the two camps working together and hand in
19 hand with the trustee. So far that has been a very
20 efficient and effective process, and we hope that it
21 will continue once the counsel is appointed.

10:55AM

22 THE COURT: Thank you. And, again, just one
23 of the odd wrinkles in this is I would imagine in the
24 normal case you would have a secured creditor or one or
25 more secured creditors who, you know, would have a first